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WRITTEN TESTIMONY OF DAVID A. MORAN
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TO THE SENATE JUDICIARY COMMITTEE

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I thank the Committee for this opportunity to submit written testimony on the state of indigent defense in Michigan. While our current system is inadequate for all indigent defendants, I will focus my remarks on the risk that innocent defendants are convicted because of inadequate representation at the trial level.

I am currently co-director of the Michigan Innocence Clinic at the University of Michigan Law School, which began operations in January 2009. So far, the Clinic has freed five wrongfully convicted men and one woman by finding evidence that was never found by trial counsel. In addition, we have accepted fourteen more cases in which we have found strong evidence of actual innocence.

From 1992 to 2000, I was an assistant defender at the State Appellate Defender Office (SADO) in Detroit, where I handled nearly 200 indigent criminal appeals from around the state. Of those appeals randomly assigned to me, we were able to exonerate and free five of those clients by presenting new evidence of complete innocence that trial counsel had failed to present.

The common thread of the cases we have taken in the Michigan Innocence Clinic and the innocent clients I represented at SADO is some of the very worst lawyering one can possibly imagine. I will describe two of these cases, one from my time at SADO and one of our current cases in the Michigan Innocence Clinic, to illustrate the point.

Harold Wells

In the mid-1990s, I was assigned to represent a man named Harold Wells, who had been sentenced to four years in prison for receiving and concealing stolen property, namely a stolen car. Mr. Wells was convicted after a bench trial in Wayne Circuit Court lasting only 30 minutes.

The prosecution called only two witnesses, both police officers. The first officer testified that he was patrolling Detroit late one evening when he saw a car run a stop sign. The officer followed the car, ran the plates, which came back as a stolen car, and initiated a chase. The car came to an abrupt stop, and the driver and two passengers bailed out. The officer caught the two passengers, a teenage boy and a teenage girl, but the driver jumped a fence and disappeared into the night. The officer could only describe the driver as a black male with brown pants.

The prosecution's only other witness, another officer, testified that he heard the first officer's dispatch and, some 15 minutes later, approximately a quarter-mile away, saw a black male wearing brown pants walking down the street. The officer arrested that man, who turned out to be Harold Wells.

And that was the prosecution's entire case—that Harold Wells was seen wearing brown pants about 15 minutes after a black male wearing brown pants ran off into the night a quarter-mile away. Appointed defense counsel did no real cross-examination, did not make an opening statement, presented no witnesses, and barely made a closing argument.

Immediately after the case was assigned to me at SADO, I did the most elementary thing that trial counsel had never bothered to do: I read the police report. In that police report, I learned that when Harold Wells was taken to the police station that night, the two juveniles who had been arrested earlier said, "That's not him." We found one of those juveniles, who not only confirmed that Harold Wells was not the man driving the stolen car; she told us that she had given the police the name and address of the man who the driver.

As a result of our very brief investigation, Harold Wells, who had no criminal record, was freed after serving approximately 18 months in prison for a crime he had nothing to do with. In addition to the incalculable damage to Mr. Wells' life, it cost Michigan approximately $50,000 to incarcerate Mr. Wells for those 18 months, while the real car thief remained at large.

In Mr. Wells' case, trial counsel had not even bothered to read the police report. Unfortunately, my experience in scores of cases has taught me that it is not at all uncommon for appointed trial attorneys in Michigan to show up for trial completely unprepared. When that happens, we all pay.

Karl Vinson

In February 2009, the newly-opened Michigan Innocence Clinic accepted, as one of its first clients, Karl Vinson. Mr. Vinson was convicted in 1986 in Wayne County of rape and breaking and entering.

During the night of January 3, 1986, a man broke into the bedroom of a nine-year-old girl in Detroit and viciously raped her. After the man left, the girl ran to her mother, who immediately suggested that the rapist might be Karl Vinson, a man who lived nearby. The girl, who had not seen Mr. Vinson for approximately three years, eventually agreed that it was Mr. Vinson, and he was arrested later that day.

At Mr. Vinson's trial, the prosecution presented forensics testimony from the now-closed Detroit Police Crime Lab. The lab analyst had found a semen stain on the girl's sheet. Since DNA testing was not available in 1986, the analyst had tested the stain to see if the rapist's blood type could be determined. Some 80% of the people in the world are "secretors," which means that their blood type shows up in the form of blood antigens in their other bodily fluids. The testing showed the presence of Type-O blood antigens in the semen stain.

The presence of Type-O, and only Type-O, blood antigens in the semen stain should have been an insurmountable problem for the prosecution because Mr. Vinson has Type-AB blood. The prosecution got around this problem two ways: (1) the prosecution argued to the jury that the O antigens must have come from the girl (who was Type O) because she bled during the assault; and (2) the analyst testified that Mr. Vinson's AB antigens were not present because he is a "non-secretor" that is, he is in the 20% of the population whose blood antigens are not found in other bodily fluids.

Mr. Vinson's appointed trial counsel challenged none of this testimony. She never consulted with any expert nor even considered having the physical evidence retested.

Mr. Vinson was convicted and has remained in prison ever since. Beginning in the early 1990s, he began writing a series of letters to the prosecutor, the judge, and the police begging them to test the semen stain for DNA. His appeals fell on deaf ears, and in 2006 Mr. Vinson learned that the Detroit Police had destroyed the sheet and all of the other physical evidence that could have been tested for DNA.

Since taking this case, we have learned: (1) the Type-O blood antigens found in the semen stain could not have come from the victim's blood because the testing that was done back in 1986 only picked up antigens found in other bodily fluids, not from blood; and (2) Mr. Vinson is a Type-AB secretor, not a non-secretor, and therefore there is no rational explanation as to why AB antigens would not have been found in the stain if he had been the rapist. Mr. Vinson was tested four times in 2009 and 2010, and there is absolutely no doubt that he is a secretor.

Our scientific experts and even the original Detroit Police Crime Lab analyst who did the testing back in 1986 have now concluded that Mr. Vinson could not possibly have left that

semen stain on the bedsheet because there is no way to explain the absence of his AB blood antigens and no way to explain the presence of O blood antigens in the semen stain on the victim's sheet. Despite all of this new evidence, the trial court denied Mr. Vinson's motion for new trial, speculating that perhaps the girl's mother had sex with an unknown man and that accounts for the semen stain on the girl's bedsheet that did not come from Mr. Vinson.

Our motion to vacate Mr. Vinson's conviction will soon be filed in the Michigan Supreme Court, and we are hopeful that Mr. Vinson will finally receive justice. I would not even know how to begin to calculate the cost of wrongfully taking away 26 years of Mr. Vinson's life. But I can calculate that it has cost the state close to a million dollars to incarcerate him. And all this time, the real child rapist, a man with blood Type-O, has presumably been out there preying on other children.

All of this could have and would have been avoided if Mr. Vinson had been given the competent counsel that the Sixth Amendment guaranteed him. Competent counsel would have consulted with forensics experts, would have asked for retesting of Mr. Vinson's saliva or semen that would have established that he is a secretor and therefore incapable of leaving the stain, and would have effectively cross-examined the prosecution's forensic analyst to establish that the O blood antigens in the stain almost certainly did not come from the victim.

Appointed trial counsel did none of these things. And we are all poorer and less safe as a direct result of trial counsel's incompetence.

As I said earlier, the stories of Harold Wells and Karl Vinson are merely illustrative of the train wreck that is our system of indigent defense in this state. Sadly, I have more such stories, and so do many other lawyers in the state.

We need a statewide system of indigent defense that imposes minimum standards on appointed counsel, adequately funds the defense function, and requires periodic and effective training and retraining. Until we have that kind of system in Michigan, cases such as Harold Wells and Karl Vinson will continue to happen over and over again.

I thank the Committee for this opportunity to testify.

Sincerely

David A. Moran